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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 LAWRENCE E. CLARKE, Jr.,

9 Plaintiff,

10 v.

11 KING COUNTY PROSECUTING  
12 ATTORNEY'S OFFICE, *et al.*,

13 Defendants.

CASE NO. C19-0109-JCC

ORDER

14 This matter comes before the Court on its pre-service review of Plaintiff Lawrence E.  
15 Clarke Jr.'s complaint (Dkt. No. 7) pursuant to 28 U.S.C. § 1915(e)(2). On March 26, 2019,  
16 United States Magistrate Judge Hon. Brian A. Tsuchida granted Plaintiff's motion to proceed *in*  
17 *forma pauperis*. (Dkt. No. 6.) Plaintiff brings his claims pursuant to the Americans with  
18 Disabilities Act ("ADA"), 42 U.S.C. §§ 12131–12134, and Rehabilitation Act of 1973, and  
19 names the King County Prosecuting Attorney's Office, King County Prosecutor Daniel  
20 Satterberg, and Senior Deputy Prosecutor Emily Petersen as Defendants. (Dkt. No. 7 at 1–2.)

21 While not entirely clear, the Court can glean the following factual allegations from  
22 Plaintiff's complaint. Plaintiff struggles with mental health issues, for which he began receiving  
23 counseling and other services at Sound Health in January 2018. (*Id.* at 5, 7, 9.) Plaintiff has also

1 been chronically homeless for much of the past decade and has attempted to obtain housing  
2 through multiple public and private programs. (*Id.* at 9–10.)

3 In April 2018, Plaintiff was arrested and charged with felonies in King County Superior  
4 Court for certain voyeurism incidents that took place in December 2017.<sup>1</sup> (*Id.* at 5, 9.) Plaintiff  
5 appears to allege that the King County prosecutor handling his case did not take his documented  
6 mental health issues into account when deciding to charge him and when recommending, as part  
7 of a plea deal, that he be incarcerated. (*Id.*) Plaintiff asserts that the prosecutor’s conduct violated  
8 the ADA and Rehabilitation Act by failing to consider “the mental health factors” of the case.  
(*Id.* at 5.)

9 Plaintiff seeks injunctive relief. He asks the Court to “stop King County from filing these  
10 charges ASAP. Low[er] the charges if needed or apply alternative sentencing, fully adhere to the  
11 Americans with disabilities act.” (*Id.* at 7.) Plaintiff states that he will lose his housing if he goes  
12 to jail and being incarcerated will adversely affect his mental health counseling and other social  
services. (*Id.* at 6.)

13 Once a complaint is filed *in forma pauperis*, the Court must dismiss it prior to service if it  
14 is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary  
15 relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(b)(ii); *see*  
16 *Lopez v. Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). A complaint is frivolous for  
17 section 1915 purposes where there is no subject matter jurisdiction. *See Castillo v. Marshall*, 207  
18 F.3d 15, 15 (9th Cir. 1997). The Court also has an independent obligation to address whether it  
19 has subject matter jurisdiction over a lawsuit. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115,  
20 1116 (9th Cir. 2004).

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23 <sup>1</sup> The complaint does not provide specifics regarding the charges, other than that they are  
“two felonies” arising out of incidents in late 2017. (Dkt. No. 7 at 5.)

1 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented  
2 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.  
3 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, section 1915(e) “not only permits but  
4 requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”  
5 *Lopez*, 203 F.3d at 1229. When dismissing a complaint under section 1915(e), the Court gives  
6 *pro se* plaintiffs leave to amend unless “it is absolutely clear that the deficiencies of the  
7 complaint could not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th  
8 Cir. 1995).

9 Plaintiff seeks a form of relief—an injunction of his state criminal proceedings—that the  
10 Court cannot provide. There is a strong policy against federal intervention in pending state  
11 judicial proceedings in the absence of extraordinary circumstances. *Younger v. Harris*, 401 U.S.  
12 37, 43–45 (1971); *see also Gilbertson v. Albright*, 381 F.3d 965, 973 (9th Cir. 2004) “*Younger*  
13 abstention is a jurisprudential doctrine rooted in overlapping principles of equity, comity, and  
14 federalism.” *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. Cty. of*  
15 *San Jose*, 546 F.3d 1087, 1091 (9th Cir. 2008). *Younger* directs federal courts to abstain from  
16 granting injunctive or declaratory relief that would interfere with pending state or local criminal  
17 proceedings. *Gilbertson*, at 381 F.3d at 968.

18 The Ninth Circuit has ruled that *Younger* abstention is appropriate when:

19 (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important  
20 state interests; (3) the federal plaintiff is not barred from litigating federal  
21 constitutional issues in the state proceeding; and (4) the federal court action would  
22 enjoin the proceeding or have the practical effect of doing so, *i.e.*, would interfere  
23 with the state proceeding in a way that *Younger* disapproves.

*Cty. of San Jose*, 546 F.3d at 1091 (citation omitted). Absent exceptional circumstances, district  
courts do not have discretion to avoid the doctrine if the elements of *Younger* abstention are  
present. *Id.* at 1092 (citation omitted). The recognized exceptional circumstances are limited to  
“a ‘showing of bad faith, harassment, or some other extraordinary circumstance that would make

1 abstention inappropriate.” *Id.* (quoting *Middlesex County Ethics Comm. v. Garden State Bar*  
2 *Ass’n.*, 457 U.S. 423, 435 (1982)).

3 The Court concludes that it is appropriate to apply *Younger* abstention in this case.  
4 Plaintiff is currently charged with felonies in King County Superior Court. (See Dkt. No. 7 at 5–  
5 7.) Washington State clearly has an important interest in ensuring that its criminal laws are  
6 properly enforced and prosecuted. Plaintiff does not suggest that he is being prevented from  
7 raising his ADA and Rehabilitation Act challenge in the pending criminal proceeding. *See Moore*  
8 *v. Sims*, 442 U.S. 415, 432 (1979) (noting that it is the plaintiff’s burden to demonstrate “that  
9 state procedural law barred presentation of [his or her] claims.”) Finally, Plaintiff is asking the  
10 Court to enjoin the state case—an action that would directly interfere with the prosecution in a  
11 way that *Younger* abstention counsels against. *Younger*, 401 U.S. 37, 43–45; (see Dkt. No. 7 at  
12 7) (requesting that the Court “stop King County from filing these charges ASAP. Low the  
13 charges if needed or apply alternative sentencing.”). Finally, Plaintiff has not identified any  
14 exceptional circumstances that would make the *Younger* doctrine inapplicable.

15 Based on the forgoing, the Court DECLINES to exercise its subject matter jurisdiction  
16 over Plaintiff’s ADA and Rehabilitation Act claims. Accordingly, the complaint is DISMISSED  
17 without prejudice.<sup>2</sup> Plaintiff’s motion to appoint counsel (Dkt. No. 8) is DENIED as moot. The  
18 Clerk is DIRECTED to send Plaintiff a copy of this order.

19 DATED this 5th day of April 2019.

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21 John C. Coughenour  
22 UNITED STATES DISTRICT JUDGE

23 <sup>2</sup> Because the Court concludes that it lacks subject matter jurisdiction, it does not reach  
the question of whether the complaint states a plausible claim for relief against Defendants.